

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

BESSIE NAPIER, JAMES NAPIER,
and LISA NAPIER, his wife,
BALLARD OOTEN, and BEATRICE OOTEN,
his wife, and JOHN DUTY,

Plaintiffs

v.

CIVIL ACTION NO. 2:05-0114

WHITE FLAME ENERGY, INC.,
a Kentucky corporation, and
VIRGINIA ENERGY COMPANY,
a Virginia corporation,

Defendants

MEMORANDUM OPINION AND ORDER

The matter before the court is defendants' motion, filed June 6, 2005, to dismiss the complaint pursuant to Rule 12(b) (1) of the Federal Rules of Civil Procedure. By order dated June 24, 2005, the court directed that plaintiffs file a response to defendants' motion before July 11, 2005. Plaintiffs have filed no response.

Plaintiffs filed their amended complaint in this action on February 15, 2005, based on diversity of citizenship, each alleging that he or she was a resident of Mingo County, West Virginia. (Am. Compl. ¶¶ 1-7.) They further allege that

defendants both are Virginia corporations conducting business in Mingo County.¹ (Am. Compl. ¶¶ 8-9.) Defendants filed their motion to dismiss on June 6, 2005, asserting that defendant White Flame Energy is a West Virginia corporation, thus defeating the diversity of citizenship requirement for subject matter jurisdiction. In support, defendants attach documentation from the West Virginia Secretary of State Business Organization System, available on the secretary's Internet site², showing that the charter state of White Flame Energy is West Virginia. (Def. Mem. Exh. B.)

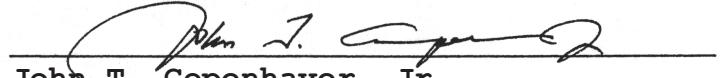
Plaintiffs having presented no evidence to the contrary, it appears that the court is without subject matter jurisdiction over this matter. It is therefore ORDERED that defendants' motion be, and it hereby is, granted, and this action is dismissed without prejudice from the docket of the court.

¹ Plaintiffs' description in their original complaint names White Flame Energy as a Kentucky corporation, as reflected in the style of this case. The description is changed by plaintiffs' amended complaint.

² www.wvsos.com/wvcorporations/OrgInfo.asp?OrgID=119707

The Clerk is directed to forward copies of this written opinion and order to all counsel of record.

DATED: July 18, 2005



John T. Copenhaver, Jr.
United States District Judge